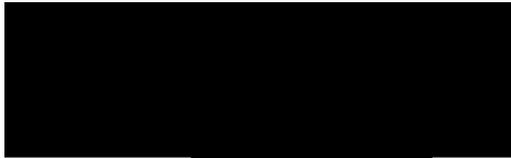




U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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FILE: [REDACTED]
XMA-88-805-3006

Office: Vermont Service Center

Date: **DEC 12 2006**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, Vermont Service Center, is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because the applicant failed to file the application for adjustment of status from temporary to permanent residence within the 43-month application period.

On appeal, the applicant states he did not receive a notice advising him of the requirement. He also indicates he was not advised by the person who assisted him with his documentation. In light of that, and the fact that he is not an expert in immigration law, he requests consideration.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if the alien fails to file for adjustment of status from temporary to permanent resident on Form I-698 within forty-three months of the date he/she was granted status as a temporary resident under § 245a.1 of this part. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on August 29, 1989. The 43-month eligibility period for filing for adjustment expired on March 29, 1993. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first received by the Immigration and Naturalization Service (INS) on September 2, 1997. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, the applicant claims that he did not apply for adjustment in a timely fashion because he had not been properly advised of the need to do so. He states that he never received a letter of instructions.

INS and private voluntary organizations widely publicized the requirement of applying for adjustment to permanent residence within the requisite period. Furthermore, INS did send notices to aliens' last known addresses, specifically advising them of the requirement. It is noted that the applicant had moved by the time he applied for adjustment to permanent residence, and any prior notices sent to him may have been sent to the original address, which would have been the only address INS had for him.

It is further noted that the original eligibility period of 31 months was extended to 43 months to better enable applicants to file timely applications. The burden to file the adjustment application in a timely manner remains with the applicant. See 8 C.F.R. § 245a.3(d).

The applicant's statements made on appeal have been considered. However, the statutory requirement to file a timely adjustment application may not be waived, even for humanitarian reasons. As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.